

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in August, 2020

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
STATE EMPLOYEES

<u>KEYWORDS:</u>	Selection; Experience; Qualifications; Job Requirement; Arbitrary and Capricious
<u>CASE STYLE:</u>	<u>Blake v. Division of Highways</u> DOCKET NO. 2019-0439-DOT (8/21/2020)
<u>PRIMARY ISSUES:</u>	Whether the selection decision was arbitrary and capricious. Whether Grievant proved that he was the most qualified candidate.
<u>SUMMARY:</u>	Grievant protests his non-selection for a Crew Chief position by Respondent, Department of Highways. Respondent selected Intervenor after crediting his work on private roads towards the position's three-years of "highway" experience prerequisite. Grievant initially requested instatement into the position but now requests a reposting of the position. For the job to be reposted, Grievant must prove that the selection process was arbitrary and capricious. To be awarded the position, Grievant must prove the same for selection decision and that he was the most qualified candidate. While Grievant proved that Respondent's selection decision was arbitrary and capricious, he did not prove that he was either the most qualified candidate or that the selection process was arbitrary and capricious. Accordingly, the grievance is DENIED.

<u>KEYWORDS:</u>	Suspension; Termination; Probationary Employee; Misconduct; Investigation
<u>CASE STYLE:</u>	<u>Guthrie v. Division of Corrections and Rehabilitation/Bureau of Prisons and Jails</u> DOCKET NO. 2020-0796-MAPS (8/31/2020)
<u>PRIMARY ISSUES:</u>	Whether Grievant proved that his suspension was improper and that he is entitled to backpay.
<u>SUMMARY:</u>	Grievant was employed on a probationary basis as a Correctional Officer. Respondent suspended Grievant without pay pending an investigation, then dismissed him after the investigation substantiated misconduct. Grievant challenged his dismissal, then conceded that his conduct was wrong and his dismissal justified. Grievant now requests backpay for the duration of his suspension, arguing that he was already punished through his dismissal. Grievant's suspension was not disciplinary because it was done to facilitate an investigation into his job-related conduct. Further, the investigation resulted in his dismissal. Grievant did not prove that the suspension was improper and that he is entitled to backpay. Accordingly, this grievance is DENIED.
<u>KEYWORDS:</u>	Employee; Employer; Lack of Jurisdiction
<u>CASE STYLE:</u>	<u>Pack v. Adjutant General's Office/Mountaineer Challenge Academy</u> DOCKET NO. 2020-1522-MAPS (8/20/2020)
<u>PRIMARY ISSUES:</u>	Whether the Grievance Board has jurisdiction in this matter.
<u>SUMMARY:</u>	Grievant was employed by the West Virginia Military Authority at the Mountaineer Challenge Academy. Grievant's employment was specifically exempted from the grievance procedure by statute. The Grievance Board lacks jurisdiction in this matter. Accordingly, the grievance is dismissed.

KEYWORDS: Dismissal, Verbal Abuse, Mental Hospital, Classified State Employee, Mitigation, Classified Service, Patient Abuse

CASE STYLE: Taylor v. Department of Health and Human Resources/Mildred Mitchell-Bateman Hospital

DOCKET NO. 2020-0862-CONS (8/28/2020)

PRIMARY ISSUES: Whether The termination of Grievant's employment was justified given the totality of the circumstances and his successful employment tenure.

SUMMARY: Grievant was dismissed from employment as a Health Service Worker for verbal abuse of a patient when he told the patient to "get his lazy ass to changing his bed" after the patient had urinated in the bed. Respondent proved that the incident occurred, and discipline was appropriate. Grievant proved that the misconduct was neither willful nor substantial enough to justify termination of a permanent classified employee with a good performance record.

Given the totality of the circumstances, mitigation of the punishment is appropriate. The dismissal is reversed and reduced to a ten-day suspension.